AF/ZW

Docket No.: 2177.1019 (formerly 1454.1509)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Michael CONRADT et al.

Serial No. 10/759,073 Group Art Unit: 2419

Confirmation No. 7154

Filed: January 20, 2004 Examiner: Jeffrey M. Rutkowski

For: METHOD FOR CLASSIFYING NETWORK COMPONENTS OF A PACKET-ORIENTED NETWORK

REPLY BRIEF UNDER 37 C.F.R §§ 41.41

Mail Stop Appeal Brief-Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Entry of this Reply Brief is respectfully requested. This Reply Brief is submitted in response to the Examiner's Answer mailed February 3, 2009 ("Examiner's Answer") in reply to the Appeal Brief filed December 9, 2008 ("Appeal Brief").

Should any additional fees be required or an overpayment of fees made, please debit or credit our Deposit Account No. 19-3935, as needed.

I. STATUS OF CLAIMS

Claims 1-11 are pending in this application at the filing of this Reply Brief. Claims 1-11 have at least been twice rejected. Claims 1 and 10-11 are independent claims, and claims 2-9 are the dependent claims.

II. GROUNDS OF REJECTION

Claims 1-5, 7-8, and 10-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0032761 ("Aoyagi et al."), in view of Management Information Base for Version 2 of the Simple Network Management Protocol ("RFC 1907"), and further in view of Management Information Base for Network Management of TCP/IP-based internets ("RFC 1213").

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Aoyagi et al. as modified by RFC 1907 and RFC 1213 as applied to claim 5, and further in view of U.S. Patent No. 5,651,006 ("Fujino et al.").

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Aoyagi et al. in view of RFC 1907 and RFC 1213 as applied to claim 1, and further in view of Fujino et al.

III. REPLY ARGUMENT

Beginning on page 7 of the Examiner's Answer, the Examiner is rebutting Appellant's argument from the Appeal Brief that the combination of Aoyagi et al., RFC 1907, and RFC 1213 do not discuss or suggest "determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component," as recited in claim 1, for example.

It is submitted that the Examiner failed to establish a prima facie case of obviousness. The references in combination do not teach or suggest all the features of claims 1-11.

The Examiner first argues, at page 7 of the Examiner's Answer, that the Appellant is arguing features not required by the claims because the invention of claim 1 does not require two separate and distinct queries be made. However, the Examiner's argument is not persuasive. As mentioned above, the language of claim 1 clearly recites "determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component." Thus, claim 1 provides for a first query as to whether the network component supports layer 3 of the OSI reference model and a second query as to whether data packets have already been forwarded in the past between the interfaces of the management-capable network component. As such, claim 1 clearly requires that both queries be executed in order to classify the management-capable network component.

The Examiner next argues, beginning at page 7 and continuing to page 8 of the Examiner's Answer, that the Appellant's argument with respect to RFC 1907 and RFC 1213 are not persuasive. The Examiner maintains his position that RFC 1907 and RFC 1213 teach "determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component," as recited in claim 1, for example.

Appellant maintains the position that the Examiner's interpretations of RFC 1907 and RFC 1213 are incorrect. In the Examiner's Answer, the Examiner specifically states that RFC 1213 defines the "ipForwDatagrams" object and that the "ipForwDatagrams" object is specifically used to determine if a device is behaving as a router because the "ipForwDatagrams" object

"looks to see" if an intermediate node is trying to find a route to forward packets to their final destination. However, the Appellant cannot find support in RFC 1213 for this interpretation by the Examiner. RFC 1213, as provided by the Examiner along with the Office Action mailed August 8, 2008, makes no mention of determining if a device is behaving as a router because the "ipForwDatagrams" object "looks to see" if an intermediate node is trying to find a route to forward packets to their final destination. These passages cannot be found in the four pages (pages 1, 16, 18, and 27) of RFC 1213 provided by the Examiner. Furthermore, it is reiterated that RFC 1213 is merely a "Request for Comments" technical paper that simply defines the object "ipForwDatagrams". Therefore, RFC 1213 cannot teach the inventive steps of claim 1, which include determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component for the purpose of properly classifying a management-capable network component.

In the Examiner's Answer, the Examiner specifically states that RFC 1907 defines the "sysServices s" object and that the "sysServices" object is specifically used to determine the set of services a device potentially offers by examining the layers of the OSI model that are supported by the device. However, the Appellant cannot find support in RFC 1907 for this interpretation by the Examiner. RFC 1907, as provided by the Examiner along with the Office Action mailed August 8, 2008, makes no mention of determining the set of services a device potentially offers by examining the layers of the OSI model that are supported by the device. These passages cannot be found in the two pages (pages 1 and 5) of RFC 1907 provided by the Examiner. Furthermore, it is reiterated that RFC 1907 is merely a "Request for Comments" technical paper that simply defines the object "sysServices". Therefore, RFC 1907 cannot teach the inventive steps of claim 1, which include determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component for the purpose of properly classifying a management-capable network component.

In the Appeal Brief, Appellant argued that Aoyagi et al. provides no motivation for determining whether data packets have already been forwarded in the past as an indication for a classification of network components and that the teaching or suggestion to make the claimed combination must be found in the prior art, and not be based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *See* M.P.E.P. § 2142. Thus, as the Examiner has relied upon the motivations of "to give a strong indication the device may be

categorized as a router" and "to enable devices connected to a network to be classified by service type," which are quoted directly from the applicants' disclosure (see paragraphs [0030]-[0033] of the specification), the Examiner has failed to establish a *prima facie* case of obviousness.

The Examiner, beginning at page 9 and continuing to page 10 of the Examiner's Answer, indicates that he is not persuaded by this argument because the motivations to combine came from the definitions of the "sysServices" and "ipForwDatagrams" objects and not from the applicant's disclosure. However, Appellant can find not such passages in either RFC 1907 or RFC 1213, which the Examiner relies on for defining the "sysServices" and "ipForwDatagrams" objects. Thus, Appellant maintains that the cited prior art provides no motivation for determining whether data packets have already been forwarded in the past as an indication for a classification of network components.

Since none of the references cited, alone or in combination, discuss or suggest all of the features of independent claim 1, and there is no proper motivation to combine these references, claim 1 patentably distinguishes over the cited prior art. Claims 2-9 depend from claim 1 and, therefore, are patentable over the cited prior art for at least the same reasons as claim 1.

It is submitted that the Examiner failed to establish a prima facie case of obviousness because the references, either alone or in combination, do not teach or suggest all the features of claim 10 and because the Examiner has not provided a proper motivation to combine the references.

Claim 10 recites a central management component that includes "a classification unit to determine whether the network component supports layer 3 of the OSI reference model and determine whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component, if the network component is a management-capable network component."

Therefore, since none of the references cited, alone or in combination, discuss or suggest all of the features of independent claim 10, and there is no proper motivation to combine these references, claim 10 patentably distinguishes over the cited prior art.

It is submitted that the Examiner failed to establish a prima facie case of obviousness because the references, either alone or in combination, do not teach or suggest all the features of claim 11 and because the Examiner has not provided a proper motivation to combine the references.

Claim 11 recites a computer readable storage medium storing a computer program to control a processor to perform a method for classifying network components of a packet-oriented network that includes "if the network component is a management-capable network component, determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component."

Therefore, since none of the references cited, alone or in combination, discuss or suggest all of the features of independent claim 11, and there is no proper motivation to combine these references, claim 11 patentably distinguishes over the cited prior art.

IV. CONCLUSION

In view of the law and facts stated herein, the Appellants respectfully submits that the Examiner has failed set forth a *prima facie* obviousness case against the pending claims.

For all the foregoing reasons, the Appellants respectfully submits that the cited prior art does not teach or suggest the presently claimed invention and that the Examiner's findings of unpatentability regarding claims 1-11 should be reversed and the patentability over the presently cited references be affirmed.

Respectfully submitted,

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